

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Tyler Walls	Team: Squad #4	CCRB Case #: 202001610	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 02/26/2020 7:21 PM	Location of Incident: § 87(2)(b)	Precinct: 103	18 Mo. SOL 8/26/2021	EO SOL 4/12/2022	
Date/Time CV Reported Wed, 02/26/2020 8:39 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 02/26/2020 8:39 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT Edwin Espinal	03384	934831	103 PCT
2. POM Brandon Grasser	14283	955961	103 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Michael Boudouris	13949	955764	103 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Brandon Grasser	Abuse: Police Officer Brandon Grasser frisked § 87(2)(b)	§ 87(2)(b)
B.POM Brandon Grasser	Abuse: Police Officer Brandon Grasser searched § 87(2)(b)	§ 87(2)(b)
C.POM Brandon Grasser	Abuse: Police Officer Brandon Grasser searched the vehicle in which § 87(2)(b) was an occupant.	§ 87(2)(b)
D.POM Brandon Grasser	Abuse: Police Officer Brandon Grasser threatened to arrest an individual.	§ 87(2)(b)
E.SGT Edwin Espinal	Abuse: Sergeant Edwin Espinal threatened to arrest § 87(2)(b)	§ 87(2)(b)
F.POM Brandon Grasser	Abuse: Police Officer Brandon Grasser threatened to arrest § 87(2)(b)	§ 87(2)(b)

Case Summary

On February 26, 2020, § 87(2)(b) filed the following complaint with the CCRB over the phone.

On February 26, 2020, at approximately 7:21 p.m., § 87(2)(b) double parked his vehicle in front of § 87(2)(b) in Queens. Sgt. Edwin Espinal, PO Michael Boudouris, and PO Michael Brasser, all of the 103rd Precinct, approached § 87(2)(b) vehicle. The officers told § 87(2)(b) that they smelled marijuana and asked him to step outside of the vehicle. PO Brasser approached § 87(2)(b) and frisked his person and searched his pockets (**Allegation A and B: Abuse of Authority, § 87(2)(g)**). PO Grasser searched inside of § 87(2)(b) vehicle (**Allegation C: Abuse of Authority, § 87(2)(g)**). Sgt. Espinal instructed § 87(2)(b) to step inside of his vehicle. § 87(2)(b) asked why he needed to step inside. Sgt. Espinal and PO Grasser told § 87(2)(b) that he would be arrested if he did not go inside of the vehicle (**Allegation D and E: Abuse of Authority, § 87(2)(g)**). § 87(2)(b) went inside of the vehicle. The officers wrote § 87(2)(b) a summons for § 87(2)(b) and then left without further incident.

The investigation obtained BWC and video surveillance of the incident.

Findings and Recommendations

Allegation (A) Abuse of Authority: PO Brandon Grasser frisked § 87(2)(b)

Allegation (B) Abuse of Authority: PO Brandon Grasser searched § 87(2)(b)

Allegation (C) Abuse of Authority: Police Officer Brandon Grasser searched § 87(2)(b) vehicle.

§ 87(2)(b) testified that he double parked his vehicle in front of his friend's barbershop at § 87(2)(b), in Queens. § 87(2)(b) double parked his vehicle for approximately two minutes to allow his friend's girlfriend to exit the vehicle at which point he parked into her spot. Sgt. Espinal approached § 87(2)(b) passenger side alone on foot and tapped on his window. § 87(2)(b) lowered his window. Sgt. Espinal ordered § 87(2)(b) to turn off his vehicle and § 87(2)(b) complied. Sgt. Espinal informed § 87(2)(b) that his vehicle was double parked and that he smelled marijuana. PO Grasser and PO Boudouris approached the other side of the vehicle and told § 87(2)(b) to get out. § 87(2)(b) complied. § 87(2)(b) provided his license and keys to one of the officers. PO Grasser patted down § 87(2)(b) jean pockets. PO Grasser then went inside of § 87(2)(b) jean pockets and inside of his fanny pack. § 87(2)(b) only had receipts in his jean pockets while his fanny pack held his ID, credit card, money, and keys. The officers asked § 87(2)(b) to move to the trunk of his vehicle and told him not to look back. § 87(2)(b) moved to the trunk of the vehicle. PO Grasser opened § 87(2)(b) vehicle door and searched inside. § 87(2)(b) glanced back several times and saw that PO Grasser entered his vehicle and searched his glove compartment. Sgt. Espinal then commanded § 87(2)(b) to sit inside of his vehicle. § 87(2)(b) complied. PO Grasser opened the trunk and searched inside. The officers did not inform § 87(2)(b) why they searched his vehicle. Upon completion of the search, § 87(2)(b) overheard one of the officers say that they found marijuana. The officers did not mention where in the vehicle they obtained the marijuana. The officers returned to their vehicle. The officers later returned, provided § 87(2)(b) with a summons for § 87(2)(b), and then walked away. § 87(2)(b) did not possess any marijuana and believes that the officers planted marijuana inside of his vehicle (BR 01).

Sgt. Espinal testified that he observed § 87(2)(b) commit a VTL violation. Sgt. Espinal did not recall what the violation was or if § 87(2)(b) vehicle was in motion at the time. Sgt. Espinal stopped behind § 87(2)(b) vehicle and approached him from the driver's side. § 87(2)(b) had his window rolled down. Sgt. Espinal immediately detected a smell of both burnt and vegetative marijuana upon reaching the vehicle. Sgt. Espinal could not observe any marijuana within the vehicle. Sgt. Espinal asked § 87(2)(b) to step outside of the vehicle, which he did. The officers

searched § 87(2)(b) Sgt. Espinal could not recall who searched § 87(2)(b) and did not know where on his person they searched as he was on the other side of the vehicle when it happened. The officers asked § 87(2)(b) to step towards the rear of the vehicle. PO Grasser searched the inside of the vehicle. Sgt. Espinal then asked § 87(2)(b) to take a seat inside of his vehicle. Sgt. Espinal did not know if the officers searched the trunk at any point but stated that it is typical to search all areas of the vehicle and all the pockets of its occupants when there is an odor of marijuana emanating from a vehicle. Sgt. Espinal eventually learned from another officer that marijuana was obtained from the rear pocket of the front passenger seat (BR 02).

§ 87(2)(g)

PO Grasser did not recall what led them to pull over § 87(2)(b) but knew that it was for a VTL violation. He could not recall if § 87(2)(b) window was rolled down but upon approaching the vehicle, he smelled an odor of unburnt marijuana emanating from inside. PO Grasser searched § 87(2)(b) because he smelled marijuana in the vehicle and wanted to try to locate any marijuana on his persons. PO Grasser did not find anything during this search. PO Grasser then searched § 87(2)(b) vehicle for marijuana. PO Grasser could not recall any specific places that he searched but he believes that he searched the entirety of the cabin. PO Grasser obtained a small quantity of marijuana from within the vehicle. PO Grasser did not recall where in the vehicle he recovered the marijuana. PO Grasser could not tell if this was the same marijuana that he smelt prior to the search. The marijuana was vouchered when the officers returned to the stationhouse (BR 03).

PO Grasser's BWC shows him frisking § 87(2)(b) and entering his fanny pack. PO Grasser then enters the driver's side of the vehicle and searches the entirety of the interior. At the 06:12 mark of the BWC, PO Grasser opens the pocket in the back of the front passenger seat and searches inside. PO Grasser is heard taking something out, but the contents of what he obtains is not in view. PO Grasser later searches the trunk of the vehicle once § 87(2)(b) steps inside. At the 12:16 mark of the video, PO Grasser hands PO Boudouris a red plastic bag of marijuana. At the 13:18 mark of the video, PO Grasser tells the other officers that he obtained the marijuana from the pocket behind the front passenger seat (BR 04).

The scent of marijuana emanating from a person's vehicle provides officers with probable cause to search the occupants and the vehicle, including the trunk. People v. Chestnut, 43A.D. 2d 260 (1974) (BR 05).

§ 87(2)(g)

§ 87(2)(g)

Allegation (D) Abuse of Authority: Police Officer Brandon Grasser threatened to arrest

§ 87(2)(b)

At the 04:27 mark of PO Grasser's BWC, while conducting his search of the back passenger seat area, PO Grasser tells a group of bystanders standing close to him on the sidewalk to back up to the nearby building or there would be a problem. The bystanders back up except for one who responds

that he does not need to back up. PO Grasser responds that he does because “we’re conducting an investigation right now, and if you’re going to interfere with it, you’re going to be under arrest.” PO Grasser asks the individual to back up several more times, but he still refuses. PO Grasser eventually continues with the search of his vehicle (BR 04).

PO Grasser testified that at a certain point when he conducted the search, the bystanders on the sidewalk started getting closer to him and encroached on his space. The bystanders refused to back up. PO Grasser needed to keep turning around to make sure that he was safe. PO Grasser stated that the bystanders could have been arrested for obstruction of government administration (OGA) if they continued to try and impede the investigation. However, PO Grasser stated that the bystanders did not successfully impede the investigation during the incident. PO Grasser could not initially recall if he informed the bystanders if they could be arrested. Later, in his interview, PO Grasser reviewed his BWC and confirmed that he told the bystanders that they could be arrested if they impeded the investigation.

Sgt. Espinal testified that he did not believe that the civilians on the sidewalk could have been arrested for anything that they did; however, he stated that he did not have a clear view of all the actions that the individuals took.

A person is guilty of obstructing governmental administration when he intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from an official function. New York State Penal Law §195-05 (BR 06).

§ 87(2)(g)

§ 87(2)(g)

Allegation (E) Abuse of Authority: Sergeant Edwin Espinal threatened to arrest § 87(2)(b)

Allegation (F) Abuse of Authority: Police Officer Brandon Grasser threatened to arrest § 87(2)(b)

As previously noted, § 87(2)(b) testified that once the officer was done searching the inside of his vehicle, Sgt. Espinal instructed him to take a seat inside of it. As he walked back to his vehicle, he observed PO Grasser opening the trunk of the vehicle. § 87(2)(b) asked why they needed to open his trunk. Sgt. Espinal told him to calm down. Sgt. Espinal then took out his handcuffs and said that if he did not take a seat in the vehicle, he would be arrested. § 87(2)(b) took a seat in his vehicle.

Sgt. Espinal stated that he displayed his handcuffs to § 87(2)(b) just in case he needed to use it; however, he had no intention of using it under the circumstances. Sgt. Espinal stated that if he continued to resist going back into his vehicle, § 87(2)(b) could have been arrested for obstruction of governmental administration (OGA).

At the 06:49 mark of Sgt. Espinal’s BWC, Sgt. Espinal informs § 87(2)(b) that he will be receiving a summons for § 87(2)(b) that they recovered and commands him to have a seat in the vehicle. § 87(2)(b) disputes the summons and does not get into the vehicle. Sgt. Espinal tells § 87(2)(b) several more times to get into the vehicle. As they argue, PO Grasser opens the trunk of the vehicle. § 87(2)(b) tells the officer that they cannot check his trunk without his permission.

At the 07:12 mark, Sgt. Espinal takes out his handcuffs from his belt and displays them at which point PO Grasser tells Sgt. Espinal to “cuff him.” § 87(2)(b) gets in the vehicle on his own after Sgt. Espinal makes several more requests.

A person is guilty of obstructing governmental administration when he intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from an official function. New York State Penal Law §195-05 (BR 06).

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 07).
- PO Grasser has been a member-of-service for seven years and has been a subject in 7 CCRB complaints and 16 allegations, none of which have been substantiated. § 87(2)(g)
- Sgt. Espinal has been a member-of-service for 17 years and has been a subject in 23 CCRB complaints and 56 allegations, of which one was substantiated.
 - 202001610 involved a substantiated allegation of interference with a recording device. The Board recommended formalized training which the NYPD has imposed.
 - § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) rejected mediation.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- As of June 21, 2021, the NYC Officer of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint.

Squad No.: 4

Investigator: Tyler Walls Inv. Tyler Walls 9/21/2021
Signature Print Title & Name Date

Squad Leader: Raquel Velasquez IM Raquel Velasquez 09/30/2021
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date